

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 14-3892-cr

Caption [use short title]

Motion for: permission to file an oversized brief

Set forth below precise, complete statement of relief sought:

US v. HILL

an order permitting appellant to file an oversized brief of 20,401 words and to file this motion

out of time.

MOVING PARTY: ELVIN HILL

☐ Plaintiff

☒ Defendant

☐ Appellant/Petitioner

☐ Appellee/Respondent

OPPOSING PARTY: UNITED STATES OF AMERICA

MOVING ATTORNEY: YUANCHUNG LEE, ESQ.

OPPOSING ATTORNEY: DANIEL S. SILVER, ESQ.

[name of attorney, with firm, address, phone number and e-mail]

Federal Defenders of New York, Inc., Appeals Bureau

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New York, New York 10007

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Assistant United States Attorney, Eastern District of New York

271 Cadman Plaza East

Brooklyn, New York 11201

(718) 254-6034

Court/Judge/Agency appealed from: MATSUMOTO J., U.S.D.J./E.D.N.Y.

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☒ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☒ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

Date: 03/20/2015

Service by: ☒ CM/ECF

☐ Other [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____

By: _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA : **D E C L A R A T I O N**

: **Docket No. 14-3892-cr**

- v -

:

ELVIN HILL, :

Defendant-Appellant. :

-----X

YUANCHUNG LEE declares under penalty of perjury pursuant to 28
U.S.C. § 1746:

1. I am an attorney with the Federal Defenders of New York, Inc., Appeals Bureau, counsel to Appellant Elvin Hill. I respectfully submit this declaration in support of appellant's motion for leave to file an oversized brief of 20,401 words and for permission to file this motion out of time. Assistant United States Attorney Daniel Silver, who represents the Government on this appeal, does not oppose this application.

2. Elvin Hill was convicted, following a jury trial, of using a firearm to murder Fredy Cuenca during a Hobbs Act robbery, in violation of 18 U.S.C. § 924(j)(1). He was sentenced to 43 years' imprisonment.

3. This is an unusual case with a long and winding history. The underlying murder occurred in 1997, nearly seventeen years before the start of the trial. Mr. Hill is charged with a capital offense, though the Government declined to seek the death penalty.

Numerous motions were filed during nearly two years of pretrial litigation, including two different motions to dismiss (for prosecutorial delay and for misconduct in the grand jury), a multi-pronged motion to suppress (for two illegal detentions and for an unnecessarily suggestive identification procedure), as well as numerous in limine motions regarding evidentiary issues. These motions triggered multiple hearings and the district court issued several opinions to resolve them.

Thus, the Statement of Facts is necessarily a great deal longer than that required for a typical appeal.

4. In addition, the four legal arguments I intend to raise are complicated and require in-depth analysis. Over the last week, I have made substantial efforts to cut the brief down to include only what is absolutely essential to represent Mr. Hill effectively given the claims raised, but the brief is still oversized.

5. Mr. Hill is serving a sentence of 43 years in prison. This appeal raises several strong claims that the district court deprived him of his right to a fair trial and thus that a new trial is warranted. In my opinion, cutting the brief further would not do justice to his appeal and would risk omitting facts and arguments essential to providing effective assistance of counsel and facilitating this Court's proper disposition of the case.

6. I make this motion out of time because I did not realize that the brief would be this long and I have been trying to cut the brief right up until today.

WHEREFORE, appellant respectfully request permission to file an oversized brief of 20,401 words, and to file this motion out of time.

I declare under penalty of perjury, 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: New York, New York
March 20, 2015

/s/
YUANCHUNG LEE



CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Motion and Declaration has been served by CM/ECF on the United States Attorney/E.D.N.Y.; Attention: **DANIEL S. SILVER, ESQ.**, Assistant United States Attorney, **c/o PATRICE JOHNSON**, Paralegal, 271 Cadman Plaza East, Brooklyn, New York 11201.

Dated: New York, New York
March 20, 2015

/s/
YUANCHUNG LEE

